

1 The opinion in support of the decision being entered today  
2 is *not* binding precedent of the Board  
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4 UNITED STATES PATENT AND TRADEMARK OFFICE  
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6  
7 BEFORE THE BOARD OF PATENT APPEALS  
8 AND INTERFERENCES  
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11 *Ex parte* WESLEY M. MAYS  
12

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14 Appeal 2007-2818  
15 Application 10/620,731  
16 Technology Center 3600  
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19 Decided: September 26, 2007  
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22 *Before:* MURRIEL E. CRAWFORD, HUBERT C. LORIN and  
23 LINDA E. HORNER, *Administrative Patent Judges.*  
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25 CRAWFORD, *Administrative Patent Judge.*  
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28 DECISION ON APPEAL  
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30 STATEMENT OF CASE

31 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection  
32 of claims 44 and 48 to 56. Claims 1 to 43 and 45 have been cancelled.  
33 Claims 46 and 47 have been allowed. We have jurisdiction under 35 U.S.C.  
34 § 6(b) (2002).

35 Appellant's invention is directed to an automatic barrier operator  
36 system (Specification 1).

1 Claim 44 under appeal reads as follows:

2 44. A method for operating a barrier, such as a gate or garage  
3 door, to move between open and closed positions, said barrier  
4 being operably connected to an operator system including a  
5 controller comprising a base control circuit, a radio frequency  
6 base transmitter and a radio frequency base receiver and plural  
7 remote control units operable to communicate with said  
8 controller, each of said remote control units including a radio  
9 frequency remote transmitter and a radio frequency remote  
10 receiver, said method comprising the steps of:

11 causing said base transmitter to transmit a radio  
12 frequency signal to said remote receivers;

13 causing said control circuit to effect one of opening and  
14 closing said barrier depending on whether or not said base  
15 receiver receives a signal from at least one of said remote  
16 transmitters; and

17 causing said barrier to move from a closed position to an  
18 open position in response to a signal from any one of said  
19 remote transmitters and remaining in an open position as long  
20 as any one of said remote control units is within a radio  
21 frequency communication range of said controller.

22 The Examiner rejected claims 44 and 48 to 56 under 35 U.S.C.  
23 § 103(a) as being unpatentable over Cohen in view of Isobe.

24 The prior art relied upon by the Examiner in rejecting the claims on  
25 appeal is:

26	Isobe	U.S. 5,291,193	Mar. 01, 1994
27	Cohen	U.S. 6,388,559 B1	May 14, 2002

28 The Examiner acknowledges that Cohen discloses that his device is  
29 used to close the door after the remote control has left the receiving and

1 transmitting range while the invention recited in claim 44, for example,  
2 requires that the device open the door in response to a signal from a remote  
3 control and remain open as long as the remote control is within transmitting  
4 range. However, the Examiner finds that Cohen discloses the concept and  
5 technology of the claimed invention and it would be well within the purview  
6 of one of ordinary skill in the art to modify the device in Cohen in such a  
7 way as to arrive at the claimed invention.

8 The Examiner relies on Isobe for disclosing a plurality of remote  
9 control units.

10 The Appellant contends that Cohen does not disclose the method steps  
11 recited in the appealed claims.

#### 12 13 ISSUE

14 Has Appellant shown that the Examiner erred in determining that the  
15 steps of the claimed subject matter would have been obvious in view of the  
16 teachings of Cohen and Isobe.

#### 17 18 FINDINGS OF FACT

19  
20 Cohen discloses a method for operating a barrier which includes a  
21 control circuit 110, a base transmitter 212, a base receiver 210 and a remote  
22 device 170. The control unit 110 includes an automatic barrier closing  
23 function (col. 2, ll. 43 to 44). The control circuit 110 is programmed to  
24 monitor whether the barrier is closed and whether the remote device 170 is  
25 within range of the control unit 110 (col. 2, ll. 44 to 46). If it is determined  
26 that the barrier is open and the remote control device 170 is out of range, as

1 is the case when a person has driven away and forgotten to close the barrier,  
2 the control circuit 110 issues a signal to close the barrier (col. 2, ll. 46 to 51).

3 Cohen does not disclose or suggest causing the control unit 110 to  
4 open the barrier in response to a signal from a remote control device 170 and  
5 maintain the barrier in an open position as long as a remote control device  
6 170 is within range of the control unit 110. Cohen does not disclose or  
7 suggest causing the control unit to open the barrier upon receiving a signal  
8 from the remote control device 170, or causing the control unit to maintain  
9 the barrier in an open position as long as the control unit receives a signal  
10 from a remote control device. Cohen does not disclose or suggest causing  
11 the control unit 110 to maintain the barrier in a closed position if one of the  
12 remote receivers 170 is within range of the control unit 110 and at least one  
13 of the remote receivers 170 is outside range of the control unit 110.

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16 PRINCIPLES OF LAW

17 In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the  
18 Examiner to establish a factual basis to support the legal conclusion of  
19 obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598  
20 (Fed. Cir. 1988). In so doing, the Examiner must make the factual  
21 determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148  
22 USPQ 459, 467 (1966). Furthermore, "there must be some articulated  
23 reasoning with some rational underpinning to support the legal conclusion of  
24 obviousness'." *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82  
25 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78  
26 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

ANALYSIS

In the instant case, the Examiner has not provided a sufficient reasoning and rationale to support the legal conclusion of obviousness. The determination by the Examiner that modifying the device disclosed in the Cohen reference to include the subject matter of the appealed method claims is “within the purview of one of ordinary skill in the art” is not sufficient reasoning and rationale on which to base an obviousness determination. The Examiner points to no suggestion or motivation to modify the Cohen method; no inferences and creative steps that a person of ordinary skill in the art would employ; no effects of demands known to the design community or present in the marketplace; and no background knowledge possessed by a person having ordinary skill in the art, as support for his conclusion that there existed at the time of the invention, an apparent reason to modify the Cohen device in the manner claimed. As such, we find that the Examiner has failed to set forth a prima facie case of obviousness, and we cannot sustain this rejection.

Upon further prosecution of this application, the Examiner is urged to consider whether the claimed subject matter is anticipated or would have been obvious in view of conventional garage door openers which employ a remote control unit to open a garage door.

REVERSED

vsh

Appeal 2007-2818  
Application 10/620,731

1 KENNETH R. GLASER  
2 MICHAEL E. MARTIN  
3 GARDERE WYNNE SEWELL, LLP  
4 1601 ELM STREET, SUITE 3000  
5 DALLAS, TX 75201